
APPENDIX D

LAWS, REGULATIONS, AND PERMITTING INFORMATION

GENERAL

The following is a listing of the Federal and state laws and regulations related to activities in the Port of Hampton Roads. Subsequent to this listing is a detailed discussion regarding some of the Federal, state, and local environmental regulatory agencies and related permitting programs.

FEDERAL AND STATE LAWS AND REGULATIONS

FEDERAL

- Title 14, United States Code, Coast Guard
- Title 15, United States Code, Commerce and Trade
- Title 19, United States Code, Customs and Duties
- Title 33, United States Code, Navigation and Navigable Waters
- Title 46, United States Code, Shipping
- Federal Water Pollution Control Act (Clean Water Act)--33 United States Code Sections 1251 to 1376
- Rivers and Harbors Act of 1899 (Protection of Navigable Waters and of Harbor and River Improvements Generally)--33 United States Code Sections 401 to 467e
- National Environmental Policy Act (NEPA)--42 United States Code Sections 4321 to 4347
- Fish and Wildlife Coordination Act--16 United States Code Sections 661 to 666c
- Oil Pollution Act of 1990--33 United States Code Sections 2701 to 2761

- Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), amended by Superfund Amendments and Reauthorization Act of 1986 (SARA)--42 United States Code Sections 9601 to 9675
- Coastal Zone Management Act of 1972--16 United States Code Sections 1451 to 1464
- Marine Protection, Research and Sanctuaries Act of 1972 (Ocean Dumping Act)--33 United States Code Sections 1401 to 1445
- Magnuson-Stevens Fishery Conservation and Management Act--16 United States Code Sections 1801 to 1883
- Endangered Species Act--16 United States Code Sections 1531 to 1544
- Marine Mammal Protection Act--31 United States Code Sections 1361 to 1421
- Coastal Wetlands Planning, Protection and Restoration Act--16 United States Code Sections 3951 to 3956

STATE

- Code of Virginia Title 28.2 Fisheries and Habitat of the Tidal Waters
 - Chapter 12 Submerged Lands, Sections 28.2-1200 to 28.2-1213
 - Chapter 13 Wetlands, Sections 28.2-1300 to 28.2-1320
 - Chapter 14 Coastal Primary Sand Dunes and Beaches, Sections 28.2-1400 to 28.2-1420
- Code of Virginia Title 62.1--Waters of the State, Ports and Harbors
- Virginia Administrative Code Title 9, Environment
 - Virginia Water Protection Permit (VWPP) Regulation--9 VAC 25-210-10 et seq.
 - Chesapeake Bay Preservation Area Designation and Management Regulations--9 VAC 10-20-10 et seq.
 - Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation--9 VAC 25-31-10 et seq.

CORPS OF ENGINEERS REGULATORY PROGRAM

Water is one of our nation's most valuable resources. It is becoming increasingly important that we protect the quality of our inland waters and wetlands for the use and benefit of future generations. If you are planning work in a river, stream, or wetland, a Corps permit may be required. The program provides for the consideration of all concerns of the public--environmental, social, and economic--in the Corps decision-making process to either issue or deny permits. As part of its responsibility to protect water quality, the Corps of Engineers Section 404 permit program extends to many areas that were not regulated prior to the Clean Water Act. The purpose of the Section 404 program is to ensure that the physical, biological, and chemical quality of our nation's water is protected from irresponsible and unregulated discharges of dredged or fill material that could permanently alter or destroy these valuable resources.

HISTORY

The Corps of Engineers has been involved in regulating certain activities in the nation's water since 1890. Until 1968, the primary thrust of the Corps regulatory program was the protection of navigation. As a result of several new laws and judicial decisions, the program evolved to one that considers the full public interest by balancing the favorable impacts against the detrimental impacts.

WHAT WORK REQUIRES A PERMIT?

Section 10 of the Rivers and Harbors Act of 1899 requires approval prior to the accomplishment of any work in or over navigable waters of the United States, or that affects the course, location, condition, or capacity of such waters. Typical activities requiring Section 10 permits are: (1) construction of piers, wharves, bulkheads, dolphins, marinas, ramps, floats, intake structures, and cable or pipeline crossings; and (2) dredging and excavation. Section 404 of the Clean Water Act requires approval prior to discharging dredged or fill material into the waters of the United States. Typical activities requiring Section 404 permits are: (1) depositing of fill or dredged material in waters of the United States or adjacent wetlands; (2) site development fill for residential,

commercial, or recreational developments; (3) construction of revetments, groins, breakwaters, levees, dams, dikes, and weirs; and (4) placement of riprap and road fills.

WHO SHOULD OBTAIN A PERMIT?

Any person, firm, or agency (including Federal, state, and local government agencies) planning to work in navigable waters of the United States, or dump or place dredged or fill material in waters of the United States, must first obtain a permit from the Corps of Engineers. Permits, licenses, variances, or similar authorizations may also be required by other Federal, state, and local statutes.

WATERS OF THE UNITED STATES

Waters of the United States include essentially all surface waters, such as all navigable waters and their tributaries, all interstate waters and their tributaries, all wetlands, and all impoundments of these waters. The landward regulatory limit for non-tidal waters (in the absence of wetlands) is the ordinary high water mark. The ordinary high water mark is the line on the shores established by the fluctuations of water and indicated by physical characteristics such as: (1) a clear natural line impressed on the bank, (2) shelving, (3) changes in the character of the soil, (4) destruction of terrestrial vegetation, (5) the presence of litter and debris; or (6) other appropriate means that consider the characteristics of the surrounding areas.

NAVIGABLE WATERS

Navigable waters are defined as waters that have been used in the past, are now used, or are susceptible to use as a means to transport interstate or foreign commerce up to the head of navigation. Section 10 and/or Section 404 permits are required for construction activities in these waters. A complete list is available in the Norfolk District office.

WETLANDS

Wetlands are areas characterized by growth of wetland vegetation where the soil is saturated during a portion of the growing season or the surface is flooded during some

part of most years. Wetlands generally include swamps, marshes, bogs, and similar areas.

TYPES OF PERMITS

Individual Permits

Individual permits are issued following a full public interest review of an individual application for a Department of the Army permit. A public notice is distributed to all known interested persons. After evaluating all comments and information received, a final decision on the application is made. The permit decision is generally based on the outcome of a public interest-balancing process, where the benefits of the project are balanced against the detriments. A permit will be granted unless the proposal is found to be contrary to the public interest. Processing time usually takes 60 to 120 days unless a public hearing is required or an environmental impact statement must be prepared. To apply for an individual permit, an application form must be completed and submitted to the Virginia Marine Resources Commission. This application is available from all regulatory field offices.

Nationwide Permits

A nationwide permit is a form of general permit which authorizes a category of activities throughout the nation. These permits are valid only if the conditions applicable to the permits are met. If the conditions cannot be met, a regional or individual permit will be required. Summaries of the nationwide permits are available. There are several nationwide permits that may be applicable, including:

- Nationwide 3: Repair, rehabilitation, or replacement of a structure or fill that was previously authorized and currently serviceable. The structure or fill must not be significantly changed.
- Nationwide 12: Utility lines placed across a waterway. Discharge of bedding and backfill material is permitted if bottom contours are not changed.

- Nationwide 18 and/or 19: Single projects of less than 10 cubic yards of fill. These permits allow up to 25 cubic yards of either fill or excavation provided that notification is given to the Corps prior to any work being undertaken.
- Nationwide 13: Bank stabilization projects less than 500 feet long containing less than an average of 1 cubic yard of material per running foot. The activity must be necessary for erosion protection and may not exceed the minimum amount needed for erosion protection. Fill is not to be placed in wetland areas or in a manner that impairs water flow. Materials free of waste metal products and unsightly debris must be used and the activity must be a single, complete project.
- Nationwide 14: Minor road crossing fills (temporary or permanent) that place less than 200 cubic yards of fill below the ordinary high water mark. The crossing must be bridged or culverted to prevent restriction of high flows. The fill placed in waters of the United States is limited to no more than one third of an acre.

Regional Permits

Regional permits are issued by the District Engineer for a general category of activities when: (1) the activities are similar in nature and cause minimal environmental impact (both individually and cumulatively), and (2) the regional permit reduces duplication of regulatory control by state and Federal agencies. The Norfolk District has several regional permits that may be applicable, including:

- Regional Permit 15: Allows the maintenance dredging of existing ditches in navigable waters in order to maintain drainage from upland areas with notification to the Corps.

- Abbreviated Standard Permit 18: Allows for expedited review of projects determined to have minimal environmental consequence after submittal of a Joint Permit Application and proper notice procedures.
- Regional Permit 19: Allows for work such as utility lines, aerial transmission lines, maintenance dredging of previously authorized projects, or bulkhead and/or riprap with associated backfill, provided that a Joint Permit Application is submitted and proper authorization is received from the state and/or local permitting agencies. This regional permit is specifically acknowledged by the Corps.
- Regional Permit 40: Allows the removal of sediment and debris to prevent the loss of property or reduce flooding and/or erosion or maintenance dredging of serviceable impoundments, including stormwater management facilities, flood control structures, public lakes, and ponds in order to reestablish their original design contours or capacity. This permit requires notification to the Corps prior to any work and written verification that the project complies with the conditions of the subject permit.

THE VIRGINIA MARINE RESOURCES COMMISSION, HABITAT MANAGEMENT DIVISION

GENERAL

The Habitat Management Division handles a permit program that encompasses subaqueous habitat preservation and the protection and preservation of tidal wetlands and coastal primary sand dunes. There has been a noteworthy effort in recent years to achieve a streamlined shoreline permit process. The Joint Permit Application, introduced in 1978 to handle local/state and Federal requirements in one form, has enjoyed wide public acceptance.

Virginia is endowed with over 5,242 miles of tidal shoreline encompassing 2,300 square miles of water surface covering 1,472,000 acres of State owned bottomlands. These submerged lands, greater in area than the State of Delaware, harbor some 21,000 acres of Chesapeake Bay grasses, 251,000 acres of public oyster grounds, and 102,000 acres of oyster grounds under private lease. These lands are a public resource and a valuable habitat for shellfish, crabs, and finfish. Along the fringes of the myriad coves, creeks, great rivers, and bays of the Chesapeake estuary grow some 225,000 acres of vegetated tidal wetlands. These vegetated areas, particularly the salt marshes, constitute a vital spawning and nursery area and are an important element of the marine food webs for many economically valuable marine resources of Virginia.

Much of the charge for ensuring that these resources are responsibly used rests with the Habitat Management Division, operating under the mandates of Virginia's Wetlands and Subaqueous Laws. The Code of Virginia vests ownership of "all the beds of the bays, rivers, creeks, and shores of the sea in the Commonwealth to be used as a common by all the people of Virginia." Permits are required from the Virginia Marine Resources Commission to encroach upon or over state owned bottomlands. The Division receives and reviews these applications, solicits public comment on them, applies public interest factors in assessing them, and then prepares a recommendation to the Commissioner or Commission for a decision.

Division personnel weigh each individual application received to determine that they are in the public interest. This is accomplished ensuring that projects are necessary (there are no reasonable alternatives requiring less environmental disruption) and that adverse effects do not unreasonably interfere with other private and public rights to the use of waterways and bottomlands. Particular emphasis in this regard has been applied to the reduction of unnecessary filling of state bottom, the reduction of obstructions or hazards to navigation, and the prevention of structures encroaching into adjoining riparian areas. Use of these project evaluation criteria at an early stage often suggests project modifications, reduces conflicts between property owners, and, of course, protects inter-tidal habitats and navigation.

Not all conflicts, however, can be settled by Division engineers through consultation with affected parties. As a citizen's body and quasi-judicial board, the full Commission, meeting monthly, does a valuable service by providing not only a forum for public discussion and the airing of disputes, but a regulatory body, evaluating the issues and making decisions.

The evaluation of proposed shoreline projects requires the balanced considerations of often complex environmental, socio-political, and economic factors. Perhaps nowhere else have the Commission's decisions been more difficult in the last several years than in the area of marina development. The issue of new marinas, particularly in localities without local zoning, and proposed marina expansions, continue to conflict with shellfish growing areas. The continued emphasis on the Chesapeake Bay cleanup effort and anticipated population increases within Tidewater will continue to make this a very important issue.

The 1982 General Assembly enacted a revised Wetlands Law that brought non-vegetated shoreline between mean low and mean high water under state or local jurisdiction, as well as the vegetated shoreline brought under protection in 1972. New guidelines were developed to assure smooth implementation of the new program. Much of the workload increase can be attributed to this expanded jurisdiction.

The Habitat Management Division also helps localities in administering their wetlands program; and where no local program exists, processes wetlands applications in the same manner for presentation to the Commission.

The Engineering/Surveying Department is responsible for surveying and mapping subaqueous grounds for public and private shellfish cultivation, leasing private shellfish grounds, and maintaining oyster ground lease records. This includes the accounting for work performed, the annual rent accounting of the leased oyster ground, and the platting and composite mapping of these parcels and the adjacent waters. There are over

250,000 acres of public grounds and currently 102,000 acres of private grounds for which the Department is responsible. Requests for new leases and transfers of current leases also are processed and surveyed. In cases of disputed claims, the Department weighs all available information in making recommendations to the division head for presentation to the Commission.

HABITAT MANAGEMENT DIVISION PERMITTING

The environmental permits issued by the Habitat Management Division are of three types: (1) subaqueous or bottomlands, (2) tidal wetlands, and (3) coastal primary sand dunes. The Division's authority and responsibilities emanate from Subtitle III of Title 28.2 of the Code of Virginia and specifically regulates physical encroachment into these valuable resource areas.

The permit process relies on a single Virginia joint local/state/Federal permit application. The review process, for which this application was originally designed, takes into account various local, state, and Federal statutes governing the disturbance or alteration of environmental resources. The Virginia Marine Resources Commission plays a central role as an information clearinghouse for all three levels of review. Applications receive independent, yet concurrent review, by local wetland boards, the Virginia Marine Resources Commission, the Virginia Department of Environmental Quality (Virginia DEQ), and the Corps of Engineers.

Joint Permit Applications are available in many local government Planning Departments and at the Virginia Marine Resources Commission's main office in downtown Newport News. The permit fee is \$25 (\$100 for projects over \$10,000); see Section 28.2-1206 of the Code of Virginia for a full description of permit fees and royalties. To receive an application by mail, please contact the Virginia Marine Resources Commission directly at (757) 247-2252.

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

This section discusses in detail the VWPP, Section 62.1-44.15:5. After the effective date of regulations pursuant to this section, issuance of a VWPP shall constitute the certification required under Section 401 of the Clean Water Act.

GENERAL

The Virginia DEQ shall issue a VWPP for an activity requiring Section 401 certification if it has determined that the proposed activity is consistent with the provisions of the Clean Water Act and will protect in-stream beneficial uses. The preservation of in-stream flows for purposes of the protection of navigation; fish and wildlife resources and habitat; and recreation, cultural, and aesthetic values; and the maintenance of waste assimilation capacity is a beneficial use of Virginia's waters. Conditions contained in a VWPP may include, but are not limited to, the volume of water that may be withdrawn as a part of the permitted activity. Domestic and other existing beneficial uses shall be considered the highest priority uses. When a VWPP is conditioned upon compensatory mitigation for adverse impacts to wetlands, the applicant may be permitted to satisfy all or part of such mitigation requirements by the purchase of credits from any wetlands mitigation bank that has been approved and is operating in accordance with applicable Federal guidance for the establishment, use, and operation of mitigation banks, as long as: (1) the bank is in the same U.S. Geological Survey cataloging unit, as defined by the Hydrologic Unit Map of the United States (U.S. Geological Survey, 1980), or an adjacent cataloging unit within the same river watershed as the impacted site; (2) the bank is ecologically preferable to practicable on-site and off-site individual mitigation options, as defined by Federal wetland regulations; and (3) the banking instrument, if approved after July 1, 1996, has been approved by a process that included public review and comment.

Prior to the issuance of a VWPP, the Virginia DEQ shall consult with, and give full consideration to the written recommendations of, the following agencies: (1) the Department of Game and Inland Fisheries, (2) the Department of Conservation and

Recreation, (3) the Virginia Marine Resources Commission, (4) the Department of Health, (5) the Department of Agriculture and Consumer Services, and (5) any other interested and affected agencies. Such consultation shall include the need for balancing in-stream uses with off-stream uses. Agencies may submit written comments on proposed permits within 45 days after notification by the Virginia DEQ. The Virginia DEQ shall assume that if written comments are not submitted by an agency within this time period, the agency has no comments on the proposed permit.

No VWPP shall be required for any water withdrawal in existence on July 1, 1989; however, a permit shall be required if a new Section 401 certification is required to increase a withdrawal.

No VWPP shall be required for any water withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal has received a Section 401 certification before January 1, 1989, with respect to installation of any necessary withdrawal structures to make such withdrawal; however, a permit shall be required before any such withdrawal is increased beyond the amount authorized by the certification.

WHO MUST APPLY?

Any project that requires Federal permits for discharge of dredged material or fill in a waterway or wetland (Clean Water Act, Section 404), work or construction in a navigable waterway (Rivers and Harbors Act, Section 10), or a water withdrawal will be reviewed by the Virginia DEQ for issuance of a VWPP. Without the VWPP (formerly called the 401 Certification), the Federal permits will not be issued.

LEGAL AUTHORITY

- Federal Clean Water Act, Section 401
- Code of Virginia, Section 62.1-44.2 et. seq.

- Code of Virginia, Section 62.1-44.15:5
- Virginia Administrative Code, 9 VAC 25-210-10 et seq.

TERM

The maximum term is up to 10 years.

FEES

- Individual permit: \$800 to \$3,000, depending on the type of permit
- General permit: \$200
- Waiver: \$400

TYPICAL REQUIREMENTS OF A PERMIT

- Alteration of the design or scale of the proposal.
- Requirement to employ specific construction practices.
- Limitations on disturbances during certain times of the year.

APPLICATION PROCESS

- Contact the Virginia Marine Resources Commission to obtain a Joint Permit Application.
- The Virginia Marine Resources Commission sends copies of each application to the Virginia DEQ, the local wetlands board when applicable, and the Corps of Engineers, which decide separately whether they need to issue a permit for the proposal. Each agency responds separately to the applicant.

- The Virginia DEQ may consult with other state and Federal agencies, and meets frequently with the Virginia Marine Resources Commission and the Corps of Engineers to discuss the applications. Time frames for processing of applications provide more information.
- Federal permits cannot be issued without the VWPP/401 Certification.

ISSUED TO OWNERS TO DREDGE AND FILL, ETC., IN STATE WATERS

- Completeness review: 14 days
- Processing of complete application: 120 days
- Public comment: 90 days

THE VIRGINIA DEQ CONCURRENCE WITH CORPS OF ENGINEERS ON NATIONWIDE PERMITS

- Completeness review: 14 days
- Processing of complete application: 30 days
- Public comment: 90 days

THE VIRGINIA DEQ AND STATE WATER CONTROL BOARD DECISION TO WAIVE REQUIRING A PERMIT

- Completeness review: 7 days
- Processing of complete application: 14 days
- Public comment: 90 days

LOCAL WETLANDS BOARD

Every county, city, or town bordering the Hampton Roads harbor has enacted a wetlands zoning ordinance creating a wetlands board, consisting of five or seven residents of that jurisdiction appointed by the local governing body. The term of all board members shall be five years. The chairman of the board shall notify the local governing body at least 30 days prior to the expiration of any member's term and shall promptly notify the local governing body if any vacancy occurs. Members may serve successive terms. A member whose term expires shall continue to serve until his successor is appointed and qualified. Members of the board shall hold no public office in the county or city other than membership on the local planning or zoning commission, the local erosion commission, or the local board of zoning appeals or as director of a soil and water conservation board. When members of these local commissions or boards are appointed to a local wetlands board, their terms of appointment shall be coterminous with their membership on those boards or commissions.

The board shall annually elect from its membership a chairman and such other officers as it deems necessary for terms of one year. For the conduct of any hearing and the taking of any action, a quorum shall be not less than three members of a five-member board nor less than four members of a seven-member board. The board may make, alter, and rescind rules and forms for its procedures, provided they are consistent with state law and local ordinances. The board shall keep a full public record of its proceedings and shall submit a report of its activities to the local governing body at least once each year. The board shall forward a copy of each report to the Virginia Marine Resources Commission.

Upon notification by any county, city, or town that it has adopted the wetlands zoning ordinance, the Virginia Marine Resources Commission shall immediately forward to that jurisdiction's wetlands board any pending permit application over which that board would have had jurisdiction if the ordinance had been in effect at the time the application was filed.

The Virginia Marine Resources Commission shall process permit applications in accordance with the provisions of the wetlands zoning ordinance, and the Commissioner, or his authorized representative, shall sign such permit; however, the Commission may designate one or more hearing officers who may, in lieu of the Commission, conduct public hearings as required under Section 28.2-1302, and thereafter report their findings and recommendations to the Commission.

Any county, city, or town may adopt the following ordinance, which, after October 1, 1992, shall serve as the only wetlands zoning ordinance under which any wetlands board is authorized to operate. Any county, city, or town that has adopted the ordinance prior to October 1, 1992, shall amend the ordinance to read as follows, "The governing body of ..., acting pursuant to Chapter 13 (Section 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia, adopts this ordinance regulating the use and development of wetlands."

The Commissioner shall review all decisions of wetlands boards and request the Virginia Marine Resources Commission to review a decision only when he believes the board failed to fulfill its responsibilities under the wetlands zoning ordinance. The Commission shall review a decision of a wetlands board when any of the following events occur:

- An appeal is taken from the decision by the applicant or the county, city, or town where the wetlands are located.
- The Commissioner requests the review. In order to make the request, the Commissioner shall notify the board; applicant; and the county, city, or town where the wetlands are located within 10 days of receiving notice of the board's decision.
- Twenty-five or more freeholders of property within the county, city, or town in which the proposed project is located sign and submit a petition to the

Commission requesting the review. The petition shall indicate those specific instances where the petitioners allege that the board failed to fulfill its responsibilities under the wetlands zoning ordinance.

All requests for review or appeal shall be made within 10 days of the date of the board's decision. The Commission shall hear and decide the review or appeal within 45 days of receiving the request for review or notice of appeal. A continuance may be granted by the Commission on a motion of the applicant; the freeholders; or the county, city, or town where the wetlands are located.

CHESAPEAKE BAY PRESERVATION ACT

GENERAL

The Virginia General Assembly enacted the Chesapeake Bay Preservation Act (CBPA) in 1988. The Act is a critical element of Virginia's multifaceted response to the Chesapeake Bay Agreement. The CBPA established a cooperative program between state and local government aimed at reducing nonpoint source pollution. The CBPA Program is designed to improve water quality in the Chesapeake Bay and its tributaries by requiring wise resource management practices in the use and development of environmentally sensitive land features. At the heart of the CBPA is the idea that land can be used and developed in ways that minimize impact on water quality.

The protection of the public interest in the Chesapeake Bay, its tributaries, and other state waters and the promotion of the general welfare of the people of the Commonwealth require that: (1) the counties, cities, and towns of Tidewater Virginia incorporate general water quality protection measures into their comprehensive plans, zoning ordinances, and subdivision ordinances; (2) the counties, cities, and towns of Tidewater Virginia establish programs, in accordance with criteria established by the Commonwealth, that define and protect certain lands, hereinafter called Chesapeake Bay Preservation Areas, which if improperly developed may result in substantial damage to the water quality of the Chesapeake Bay and its tributaries; (3) the Commonwealth makes

its resources available to local governing bodies by providing financial and technical assistance, policy guidance, and oversight when requested or otherwise required to carry out and enforce the provisions of the CBPA; and (4) all agencies of the Commonwealth exercise their delegated authority in a manner consistent with water quality protection provisions of local comprehensive plans, zoning ordinances, and subdivision ordinances when it has been determined that they comply with the provisions of the CBPA. Local governments have the initiative for planning and for implementing the provisions of the CBPA, and the Commonwealth shall act primarily in a supportive role by providing oversight for local governmental programs, by establishing criteria, and by providing those resources necessary to carry out and enforce the provisions of the CBPA (1988, cc. 608, 891).

The CBPA established the Chesapeake Bay Local Assistance Board. The Board consists of nine Tidewater Virginia residents appointed by the Governor, subject to confirmation by the General Assembly. The Board contains at least one individual from each Planning District in which there is located one or more Tidewater Virginia localities. Members of the Board are representative of, but not limited to, citizens with an interest in and experience with local government, business, agriculture, forestry, the protection of water quality, and the use and development of land. The Board meets at least four times a year, and other meetings may be held at any time or place determined by the Board.

The Board is responsible for carrying out the purposes and provisions of the CBPA and is authorized to:

- Provide land use and development and water quality protection information and assistance to the various levels of local, regional, and state government within the Commonwealth.
- Consult, advise, and coordinate with the Governor, the Secretary of Natural Resources, the General Assembly, other state agencies, regional agencies, local governments, and Federal agencies.

- Provide financial and technical assistance and advice to local governments and to regional and state agencies concerning aspects of land use and development and water quality protection.
- Promulgate regulations pursuant to the Administrative Process Act (Section 9-6.14:1 et seq.).
- Develop, promulgate, and keep current the criteria required by Section 10.1-2107.
- Provide technical assistance and advice or other aid for the development, adoption, and implementation of local comprehensive plans, zoning ordinances, subdivision ordinances, and other land use and development and water quality protection measures utilizing criteria established by the Board.
- Develop procedures for use by local governments to designate Chesapeake Bay Preservation Areas in accordance with the criteria developed pursuant to Section 10.1-2107.
- Ensure that local government comprehensive plans, zoning ordinances, and subdivision ordinances are in accordance with the provisions of the CBPA. Determination of compliance shall be in accordance with the provisions of the Administrative Process Act (Section 9-6.14:1 et seq.).
- Make application for Federal funds that may become available under Federal acts and to transmit such funds when applicable to any appropriate person.
- Take administrative and legal actions to ensure compliance by counties, cities, and towns with the provisions of the CBPA.

- Perform such other duties and responsibilities related to the use and development of land and the protection of water quality as the Secretary of Natural Resources may assign.
- Enter into contracts necessary and convenient to carry out the provisions of the CBPA (1988, cc. 608, 891).

In order to implement the provisions of the CBPA and to assist counties, cities, and towns in regulating the use and development of land and in protecting the quality of state waters, the Chesapeake Bay Local Assistance Board promulgates regulations that establish criteria for use by local governments to determine the ecological and geographic extent of Chesapeake Bay Preservation Areas. The Board also promulgates regulations that establish criteria for use by local governments in granting, denying, or modifying requests to rezone, subdivide, or use and develop land in these areas.

In developing and amending the criteria, the Chesapeake Bay Local Assistance Board shall consider all factors relevant to the protection of water quality from significant degradation as a result of the use and development of land. The criteria shall incorporate measures such as performance standards, best management practices, and various planning and zoning concepts to protect the quality of state waters, while allowing use and development of land consistent with the provisions of the CBPA. The criteria adopted by the Board, operating in conjunction with other state water quality programs, shall encourage and promote: (1) the protection of existing high quality state waters and restoration of all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them; (2) the safeguarding the clean waters of the Commonwealth from pollution; (3) the prevention of any increase in pollution; (4) the reduction of existing pollution; and (5) the promotion of water resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of the Commonwealth.

Counties, cities, and towns are authorized to exercise their police and zoning powers to protect the quality of state waters consistent with the provisions of the CBPA. Counties, cities, and towns in Tidewater Virginia shall use the criteria developed by the Chesapeake Bay Local Assistance Board to determine the extent of the CBPA within their jurisdictions. Every county, city, and town in Tidewater Virginia shall accomplish designation of Chesapeake Bay Preservation Areas. Counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of state waters into each locality's comprehensive plan. All counties, cities, and towns in Tidewater Virginia shall have zoning ordinances that incorporate measures to protect the quality of state waters in the Chesapeake Bay Preservation Areas. Zoning in Chesapeake Bay Preservation Areas shall comply with all criteria set forth in or established pursuant to Section 10.1-2107. Counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into their subdivision ordinances. Counties, cities, and towns in Tidewater Virginia shall ensure that all subdivisions developed pursuant to their subdivision ordinances comply with all criteria developed by the Board.

DEFINITIONS

Resource Protection Areas

Resource Protection Areas consist of sensitive lands at or near the shoreline that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts that may cause significant degradation to the quality of state waters. In their natural condition, these lands provide for the removal, reduction, or assimilation of sediments, nutrients, and potentially harmful or toxic substances in runoff entering the Chesapeake Bay and its tributaries, and minimize the adverse effects. The Resource Protection Areas include:

- Tidal wetlands;
- Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or tributary streams;
- Tidal shores;
- Such other lands under the provisions of subsection A of Section 3.2 of the CBPA necessary to protect the quality of state waters; and
- A buffer area not less than 100 feet in width located adjacent to and landward of the components listed in the subdivisions above, and along both sides of any tributary stream. The full buffer area shall be designated as the landward component of the Resource Protection Area notwithstanding the presence of permitted uses or equivalent measures. Designation of this area shall not be subject to reduction unless based on reliable site-specific information as provided in subsection B of Section 9 VAC 10-20-110, and subsections C and E of Section 9 VAC 10-20-220.

Resource Management Areas

Resource Management Areas include land types that, if improperly used or developed, have a potential for causing significant water quality degradation or for diminishing the functional value of the Resource Protection Area. A Resource Management Area shall be provided contiguous to the entire inland boundary of the Resource Protection Area. Resource Management Areas encompass a land area large enough to provide significant water quality protection. The following land categories shall be considered for inclusion in the Resource Management Areas:

- Floodplains;
- Highly erodible soils, including steep slopes;

- Highly permeable soils;
- Nontidal wetlands not included in the Resource Protection Area; and
- Such other lands under the provisions of subsection A of Section 9 VAC 10-20-90 of this part necessary to protect the quality of state waters.

Intensely Developed Areas

Local governments may designate Intensely Developed Areas as an overlay of Chesapeake Bay Preservation Areas within their jurisdictions. Intensely Developed Areas serve as redevelopment areas in which development is concentrated as of the local program adoption date. Areas so designated shall comply with the performance criteria for redevelopment. Local governments exercising this option shall examine the pattern of residential, commercial, industrial, and institutional development within Chesapeake Bay Preservation Areas. The following categories will be considered for inclusion as an Intensely Developed Area:

- Development has severely altered the natural state of the area such that it has more than 50 percent impervious surface.
- Public sewer and water is constructed and currently serves the area by the effective date. This condition does not include areas planned for public sewer and water.
- Housing density is equal to or greater than 4 dwelling units per acre.

CONTACT POINTS

- **Chesapeake, City of**
Department of Planning
Post Office Box 15225
Chesapeake, Virginia 23328
(757) 547-6167
Fax: (757) 436-8356
- **Hampton, City of**
Department of Planning
22 Lincoln Street
Hampton, Virginia 23669
(757) 727-6140
Fax: (757) 727-6895
- **Newport News, City of**
Department of Planning
2400 Washington Avenue
Newport News, Virginia 23607
(757) 926-8761
Fax: (757) 926-3639
- **Norfolk, City of**
403 City Hall Building
Norfolk, Virginia 23501
(757) 664-4369
Fax: (757) 664-4370

- **Portsmouth, City of**

City Hall

801 Crawford Street

Portsmouth, Virginia 23704

(757) 393-8836

Fax: (757) 393-5230

- **Suffolk, City of**

Department of Community Development

Post Office Box 1858

Suffolk, Virginia 23434

(757) 934-3111 or 925-6466

Fax: (757) 539-7693

- **Virginia Beach, City of**

Environmental Management Center

Operations Building, Room 164

Municipal Center

Virginia Beach, Virginia 23456

(757) 426-5790

Fax: (757) 426-5667

Internet address: <http://www.virginia-beach.va.us/cityhall/planning/emchome.html>